

NEW YORK STATE SUPREME COURT
ERIE COUNTY

-----X
DAVID FUNK,

Plaintiff,

-against-

DIOCESE OF BUFFALO and CORONATION OF THE
BLESSED VIRGIN MARY CHURCH AND SCHOOL,

Defendants.
-----X

Index No.: _____

Date Filed: November 6, 2019

SUMMONS

Plaintiff designates Erie County
as the place of trial.

The basis of venue is one
defendant's residence.

Child Victims Act Proceeding
22 NYCRR 202.72


TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: November 6, 2019

Respectfully Yours,

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COMPLAINT

Child Victims Act Proceeding
22 NYCRR 202.72

Plaintiff David Funk, by and through his attorneys, the Marsh Law Firm PLLC and Pfau Cochran Vertetis Amala PLLC, respectfully alleges for his complaint the following:

I. INTRODUCTION

1. The Diocese of Buffalo (the “Diocese”) knew for decades that its priests, clergy, teachers, school administrators, employees, and volunteers were using their positions within the Diocese to groom and to sexually abuse children. Despite that knowledge, the Diocese failed to take reasonable steps to protect children from being sexually abused and actively concealed the abuse.

2. Since 2018, following decades of denial and cover-up, the Diocese of Buffalo began releasing the names of priests who were accused of sexually abusing children. While the Diocese of Buffalo has listed at least 80 priests with substantiated claims of sexual abuse of a minor, it has been reported that there are well over a 100 clergy in the Diocese of Buffalo who have faced allegations of sexually abusing a child. Based on the Diocese’s wrongful conduct, a reasonable person could and would conclude that it knowingly and recklessly disregarded the abuse of children and chose to protect its reputation and wealth over those who deserved protection. The result is not surprising: for decades hundreds, if not thousands, of children were

sexually abused by Catholic clergy and others who served the Diocese. The plaintiff in this lawsuit is one of many children who was sexually abused because of the Diocese's wrongful conduct.

II. PROCEEDING IN ACCORDANCE WITH CPLR 214-G AND 22 NYCRR 202.72

3. This complaint is filed pursuant to the Child Victims Act (CVA) 2019 Sess. Law News of N.Y. Ch. 11 (S. 2440), CPLR 214-G, and 22 NYCRR 202.72. The CVA opened a historic one-year one-time window for victims and survivors of childhood sexual abuse in the State of New York to pursue lapsed claims. Prior to the passage of the CVA, plaintiff's claims were time-barred the day he turned 22 years old. The enactment of the CVA allows victims and survivors of childhood sexual abuse, for the first time in their lives, to pursue restorative justice in New York State.

III. PARTIES

4. Plaintiff David Funk is an adult male who currently resides in Runnells, Iowa.

5. Upon information and belief, the Diocese is currently a not-for-profit religious corporation organized under New York law with its principal office in Buffalo, New York.

6. Upon information and belief, at all relevant times the Diocese conducted business as the "Diocese of Buffalo" or the "Buffalo Diocese."

7. Upon information and belief, at all relevant times the Diocese employed priests and others who served various Catholic institutions and families, including plaintiff David Funk and his family.

8. Upon information and belief, the choir director ("choir director") was a choir director employed by the Diocese to serve Catholic families, including plaintiff David Funk and his family. During the time the choir director was employed by the Diocese, he used his position as a choir director to groom and to sexually abuse plaintiff David Funk.

9. To the extent that the Diocese was a different entity, corporation, or organization during the period of time during which the choir director used his position as a choir director to sexually abuse plaintiff David Funk, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

10. To the extent the Diocese is a successor to a different entity, corporation, or organization which existed during the period of time during which the choir director used his position as a choir director to sexually abuse plaintiff David Funk, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

11. All such Diocese-related entities, corporations, or organizations are collectively referred to herein as the “Diocese.”

12. Upon information and belief, at all relevant times defendant Coronation of the Blessed Virgin Mary Church and School (“Blessed Virgin Mary”) was a not-for-profit religious corporation organized under New York law and wholly owned, operated, and controlled by the Diocese.

13. Upon information and belief, Blessed Virgin Mary is currently a not-for-profit religious corporation organized under New York law with its principal office in Buffalo, New York.

14. Upon information and belief, at all relevant times Blessed Virgin Mary conducted business as “Blessed Virgin Mary,” “Coronation of the Blessed Virgin Mary Church and School,” “Coronation of the Blessed Virgin Mary Church,” “Coronation of the Blessed Virgin Mary School,” “Blessed Virgin Mary Parish,” “Blessed Virgin Mary School,” “Blessed Virgin Mary Church.”

15. Blessed Virgin Mary is a parish with a church and school located in Buffalo, New York.

16. Upon information and belief, the choir director was a choir director employed by Blessed Virgin Mary to serve Catholic families in its geographic jurisdiction, including plaintiff David Funk and his family. During the time the choir director was employed by Blessed Virgin Mary, he used his position as a choir director to groom and to sexually abuse plaintiff David Funk.

17. To the extent that Blessed Virgin Mary was a different entity, corporation, or organization during the period of time during which choir director used his position as a choir director to sexually abuse David, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

18. To the extent Blessed Virgin Mary is a successor to a different entity, corporation, or organization which existed during the period of time during which the choir director used his position as a choir director to sexually abuse David, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

19. All such Blessed Virgin Mary-related entities, corporations, or organizations are collectively referred to herein as “Blessed Virgin Mary.”

IV. VENUE

20. Venue is proper because the Diocese is a domestic corporation authorized to transact business in New York with its principal office located in Erie County.

21. Venue is proper because Blessed Virgin Mary is a domestic corporation authorized to transact business in New York with its principal office located in Buffalo, New York.

22. Venue is proper because Erie is the county in which a substantial part of the events or omissions giving rise to plaintiff’s claim occurred.

V. STATEMENT OF FACTS AS TO PLAINTIFF DAVID FUNK

23. Upon information and belief, at all relevant times the Diocese was the owner of Blessed Virgin Mary and held itself out to the public as the owner of Blessed Virgin Mary.

24. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled Blessed Virgin Mary.

25. Upon information and belief, at all relevant times the Diocese employed priests, school administrators, teachers, religious sisters, and/or others who served Catholic families at Blessed Virgin Mary, including plaintiff David Funk and his family.

26. Upon information and belief, at all relevant times the Diocese, its agents, servants, and employees managed, maintained, operated, and controlled Blessed Virgin Mary, and held out to the public its agents, servants, and employees as those who managed, maintained, operated, and controlled Blessed Virgin Mary.

27. Upon information and belief, at all relevant times the Diocese was responsible for the hiring and staffing, and did the hiring and staffing, at Blessed Virgin Mary.

28. Upon information and belief, at all relevant times the Diocese was responsible for and did the recruitment and staffing of volunteers at Blessed Virgin Mary.

29. Upon information and belief, at all relevant times the Diocese materially benefited from the operation of Blessed Virgin Mary, including the services of the choir director and the services of those who managed and supervised choir director.

30. Upon information and belief, at all relevant times Blessed Virgin Mary owned a parish, church, and school.

31. Upon information and belief, at all relevant times Blessed Virgin Mary held itself out to the public as the owner of Blessed Virgin Mary.

32. Upon information and belief, at all relevant times Blessed Virgin Mary employed priests and others who served Catholic families, including plaintiff David Funk and his family.

33. Upon information and belief, at all relevant times Blessed Virgin Mary, its agents, servants, and employees managed, maintained, operated, and controlled Blessed Virgin Mary, and held out to the public its agents, servants and employees as those who managed, maintained, operated, and controlled Blessed Virgin Mary.

34. Upon information and belief, at all relevant times Blessed Virgin Mary was responsible for and did the staffing and hiring at Blessed Virgin Mary.

35. Upon information and belief, at all relevant times Blessed Virgin Mary was responsible for and did the recruitment and staffing of volunteers at Blessed Virgin Mary.

36. Upon information and belief, at all relevant times Blessed Virgin Mary materially benefitted from the operation of Blessed Virgin Mary, including the services of the choir director and the services of those who managed and supervised the choir director.

37. Upon information and belief, at all relevant times the choir director was a choir director of the Diocese.

38. Upon information and belief, at all relevant times the choir director was on the staff of, acted as an agent of, and served as an employee of the Diocese.

39. Upon information and belief, at all relevant times the choir director was acting in the course and scope of his employment with the Diocese.

40. Upon information and belief, at all relevant times the choir director was employed by the Diocese and assigned to Blessed Virgin Mary.

41. Upon information and belief, at all relevant times the choir director was a choir director of Blessed Virgin Mary.

42. Upon information and belief, at all relevant times the choir director was on the staff of, was an agent of, and served as an employee of Blessed Virgin Mary.

43. Upon information and belief, at all relevant times the choir director was acting in the course and scope of his employment with Blessed Virgin Mary.

44. Upon information and belief, at all relevant times the choir director had an office on the premises of Blessed Virgin Mary.

45. When plaintiff David Funk was a minor, he and his parents were members of the Diocese and Blessed Virgin Mary, and David was a student of their school.

46. At all relevant times, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, held the choir director out to the public, to David, and to his parents, as their agent and employee.

47. At all relevant times, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, held the choir director out to the public, to David, and to his parents, as having been vetted, screened, and approved by those defendants.

48. At all relevant times, David and his parents reasonably relied upon the acts and representations of the Diocese and Blessed Virgin Mary, their agents, servants, and employees, and reasonably believed that the choir director was an agent or employee of those defendants who was vetted, screened, and approved by those defendants.

49. At all relevant times, David and his parents trusted the choir director because the Diocese and Blessed Virgin Mary held him out as someone who was safe and could be trusted with the supervision, care, custody, and control of David.

50. At all relevant times, David and his parents believed that the Diocese and Blessed Virgin Mary would exercise such care as would a parent of ordinary prudence in comparable circumstances when those defendants assumed supervision, care, custody, and control of David.

51. When David was a minor, the choir director sexually abused him.

52. David was sexually abused by the choir director from approximately age 7 to 11 years old.

53. Based on the representations of the Diocese and Blessed Virgin Mary that the choir director was safe and trustworthy, David and his parents allowed David to be under the supervision of, and in the care, custody, and control of, the Diocese and Blessed Virgin Mary, including during the times when David was sexually abused by the choir director.

54. Based on the representations of the Diocese and Blessed Virgin Mary that the choir director was safe and trustworthy, David and his parents allowed David to be under the supervision of, and in the care, custody, and control of, the choir director, including during the times when David was sexually abused by the choir director.

55. Neither David nor his parents would have allowed him to be under the supervision of, or in the care, custody, or control of, the Diocese, Blessed Virgin Mary, or the choir director if the Diocese or Blessed Virgin Mary had disclosed to David or his parents that the choir director was not safe and was not trustworthy, and that he in fact posed a danger to David in that the choir director was likely to sexually abuse David.

56. No parent of ordinary prudence in comparable circumstances would have allowed David to be under the supervision of, or in the care, custody, or control of, the Diocese, Blessed Virgin Mary, or the choir director if the Diocese or Blessed Virgin Mary had disclosed to David

or his parents that the choir director was not safe and was not trustworthy, and that he in fact posed a danger to David in that the choir director was likely to sexually abuse him.

57. From approximately 1965 through 1969, the choir director exploited the trust and authority vested in him by defendants by grooming David to gain his trust and to obtain control over him as part of the choir director's plan to sexually molest and abuse David and other children.

58. The choir director used his position of trust and authority as a choir director of the Diocese and of Blessed Virgin Mary to groom David and to sexually abuse him multiple times, including when David was under the supervision of, and in the care, custody, or control of, the Diocese, Blessed Virgin Mary, and the choir director.

59. At certain times, the sexual abuse of David by the choir director occurred at Blessed Virgin Mary, including in the choir loft of the church.

60. At certain times, choir director's sexual abuse of David occurred during activities that were sponsored by, or were a direct result of activities sponsored by, the Diocese and Blessed Virgin Mary, including during choir practice.

61. Upon information and belief, prior to the times mentioned herein, the choir director was a known sexual abuser of children.

62. At all relevant times, defendants, their agents, servants, and employees, knew or should have known that the choir director was a known sexual abuser of children.

63. Upon information and belief, at all relevant times it was reasonably foreseeable to defendants, their agents, servants, and employees that the choir director's sexual abuse of children would likely result in injury to others, including the sexual abuse of David and other children by the choir director.

64. Upon information and belief, at certain times between 1965 and 1969, defendants, their agents, servants, and employees knew or should have known that the choir director was sexually abusing David and other children at Blessed Virgin Mary and elsewhere.

65. Upon information and belief, defendants, their agents, servants, and employees knew or should have known that the sexual abuse by the choir director of David was ongoing.

66. Upon information and belief, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, knew or should have known that choir director was likely to abuse children, including David, because nuns at the school were aware that the choir director was isolating minor boys and spending alone time with minor boys, including David.

67. Upon information and belief, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, knew or should have known before and during the choir director's sexual abuse of David that priests, school administrators, teachers, religious sisters, and/or other persons serving the Diocese and Blessed Virgin Mary had used their positions with those defendants to groom and to sexually abuse children.

68. Upon information and belief, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, knew or should have known before and during the choir director's sexual abuse of David that such priests, school administrators, teachers, religious sisters, and/or other persons could not be "cured" through treatment or counseling.

69. Upon information and belief, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, concealed the sexual abuse of children by the choir director in order to conceal their own bad acts in failing to protect children from him, to protect their reputation, and to prevent victims of such sexual abuse by him from coming forward during the extremely limited

statute of limitations prior to the enactment of the CVA, despite knowing that the choir director would continue to molest children.

70. Upon information and belief, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, consciously and recklessly disregarded their knowledge that the choir director would use his position with the defendants to sexually abuse children, including David.

71. Upon information and belief, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, disregarded their knowledge that the choir director would use his position with them to sexually abuse children, including David.

72. Upon information and belief, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, acted in concert with each other or with the choir director to conceal the danger that choir director posed to children, including David, so that the choir director could continue serving them despite their knowledge of that danger.

73. Upon information and belief, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, knew that their negligent, reckless, and outrageous conduct would inflict severe emotional and psychological distress, as well as personal physical injury, on others, including David, and he did in fact suffer severe emotional and psychological distress and personal physical injury as a result of their wrongful conduct.

74. Upon information and belief, the Diocese and Blessed Virgin Mary, their agents, servants, and employees, concealed the sexual abuse of children by priests, school administrators, teachers, religious sisters, and/or others in order to conceal their own bad acts in failing to protect children from being abused, to protect their reputation, and to prevent victims of such sexual abuse from coming forward during the extremely limited statute of limitations prior to the enactment of

the CVA, despite knowing that those priests, school administrators, teachers, religious sisters, and/or other persons would continue to molest children.

75. By reason of the wrongful acts of the Diocese and Blessed Virgin Mary as detailed herein, David sustained physical and psychological injuries, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, family turmoil and loss of faith, a severe shock to his nervous system, physical pain and mental anguish, and emotional and psychological damage, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and David has and/or will become obligated to expend sums of money for treatment.

VI. CAUSES OF ACTION AS TO PLAINTIFF DAVID FUNK

A. FIRST CAUSE OF ACTION – NEGLIGENCE

76. Plaintiff David Funk repeats and re-alleges all of his allegations above and below.

77. The Diocese and Blessed Virgin Mary had a duty to take reasonable steps to protect plaintiff David Funk, a child, from foreseeable harm when he was under their supervision and in their care, custody, and control.

78. The Diocese and Blessed Virgin Mary also had a duty to take reasonable steps to prevent the choir director from using the tasks, premises, and instrumentalities of his position with the defendants to target, groom, and sexually abuse children, including David.

79. The Diocese and Blessed Virgin Mary were supervising David, and had care, custody, and control of David, when he was a student and at other times, during which time those defendants had a duty to take reasonable steps to protect him.

80. These circumstances created a special relationship between the Diocese and David, and between Blessed Virgin Mary and David, which imposed on each of those defendants a duty to exercise the degree of care of a parent of ordinary prudence in comparable circumstances.

81. The Diocese and Blessed Virgin Mary breached each of the foregoing duties by failing to exercise reasonable care to prevent the choir director from harming David, including sexually abusing him.

82. In breaching their duties, including hiring, retaining, and failing to supervise the choir director, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn David, his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for David and other children who were under their supervision and in their care, custody, and control, the Diocese and Blessed Virgin Mary created a risk that David would be sexually abused by the choir director. The Diocese and Blessed Virgin Mary through their actions and inactions created an environment that placed David in danger of unreasonable risks of harm under the circumstances.

83. In breaching their duties, including hiring, retaining, and failing to supervise the choir director, giving him access to children, entrusting their tasks, premises, and instrumentalities to him, failing to train their personnel in the signs of sexual predation and to protect children from sexual abuse and other harm, failing to warn David, his parents, and other parents of the danger of sexual abuse, and failing to create a safe and secure environment for David and other children who were under their supervision and in their care, custody, and control, the Diocese and Blessed Virgin Mary acted willfully and with conscious disregard for the need to protect David. The Diocese and Blessed Virgin Mary through their actions and inactions created an environment that placed David in danger of unreasonable risks of harm under the circumstances.

84. It was reasonably foreseeable that defendants' breach of these duties of care would result in the sexual abuse of David.

85. As a direct and proximate result of the acts and omissions of the Diocese and Blessed Virgin Mary, the choir director groomed and sexually abused David, which has caused David to suffer general and special damages as more fully described herein.

B. SECOND CAUSE OF ACTION – OUTRAGE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

86. Plaintiff David Funk repeats and re-alleges all of his allegations above and below.

87. The Diocese and Blessed Virgin Mary engaged in reckless, extreme, and outrageous conduct by providing the choir director with access to children, including plaintiff David Funk, despite knowing that he would likely use his position to groom and to sexually abuse them, including David. Their misconduct was so shocking and outrageous that it exceeds the reasonable bounds of decency as measured by what the average member of the community would tolerate and demonstrates an utter disregard by them of the consequences that would follow.

88. As a result of this reckless, extreme, and outrageous conduct, the choir director gained access to David and sexually abused him.

89. The Diocese and Blessed Virgin Mary knew that this reckless, extreme, and outrageous conduct would inflict severe emotional and psychological distress, including personal physical injury, on others, and David did in fact suffer severe emotional and psychological distress and personal physical injury as a result, including severe mental anguish, humiliation and emotional and physical distress.

VII. CPLR 1603 – NO APPORTIONMENT OF LIABILITY

90. Pursuant to CPLR 1603, the foregoing causes of action are exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(2), CPLR 1602(5), 1602(7) and 1602(11), thus precluding

defendants from limiting their liability by apportioning some portion of liability to any joint tortfeasor.

VIII. PRAYER FOR RELIEF

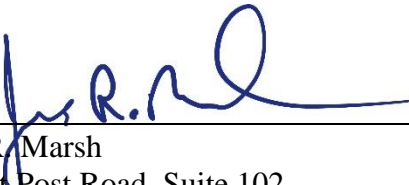
91. Plaintiff David Funk demands judgment against the defendants named in his causes of action, together with compensatory and punitive damages to be determined at trial, and the interest, cost and disbursements pursuant to his causes of action, and such other and further relief as the Court deems just and proper.

92. Plaintiff David Funk specifically reserves the right to pursue additional causes of action, other than those outlined above, that are supported by the facts pleaded or that may be supported by other facts learned in discovery.

Dated: November 6, 2019

Respectfully Yours,

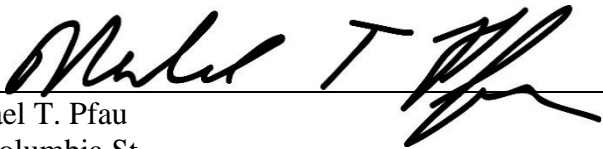
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